

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/CS/HB 371 Site Selection of Community Residential Homes  
**SPONSOR(S):** Economic Development & Community Affairs Policy Council & Stargel  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1124

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	<u>Military &amp; Local Affairs Policy Committee</u>	<u>14 Y, 0 N, As CS</u>	<u>Rojas</u>	<u>Hoagland</u>
1)	<u>Health Care Services Policy Committee</u>	<u>6 Y, 1 N</u>	<u>Preston</u>	<u>Schoolfield</u>
2)	<u>Economic Development &amp; Community Affairs Policy Council</u>		<u>Rojas</u>	<u>Tinker</u>
3)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

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**SUMMARY ANALYSIS**

Chapter 419, F.S., provides the statutory framework for site selection of community residential homes. These homes are licensed to serve residents who are clients of the Department of Elder Affairs (DOEA), the Agency for Persons with Disabilities (APD), the Department of Juvenile Justice (DJJ), or the Department of Children and Family Services (DCF) or the Agency for Health Care Administration (AHCA) and provide a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.

This CS defines planned residential communities as a planned unit development having amenities that are designed to serve residents who have developmental disabilities and may consist of two or more community residential homes that are contiguous to one another. The CS provides that a home that has six or fewer residents that would otherwise meet the definition of a community residential home and is within a planned residential community is not subject to the 1000 foot radius prohibition.

The bill is anticipated to have no fiscal impact on state or local government.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

In 1989, House Bill 1269<sup>1</sup> established the framework for what is currently s. 419.001, F.S. One of the purposes was to prevent or reduce inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care. The goal was to follow a deinstitutionalization model for placement of persons with special needs in the least restrictive setting and for the encouragement of placement of such individuals in community residential facilities.

Currently, s. 419.001, F.S., requires the local government to approve the location of certain residential homes which provide for a living environment for seven to fourteen unrelated residents. When a site for a community residential home has been selected by a sponsoring agency<sup>2</sup> in an area zoned for multifamily use, the agency must notify the Chief Executive Officer of the local government in writing. The local government then has up to 60 days to respond and if no response is given within 60 days, the sponsoring agency may establish the home at the site in question. Currently, homes with six or fewer residents are deemed a single family unit and do not require approval by the local government, provided that the home does not exist in a 1,000 feet radius of another six or fewer resident home.

Section 419.001(1)(d), F.S., defines a "resident" as a:

- "Developmentally disabled person" pursuant to s.393.063, F.S., which includes a person with a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.
- "Frail elder" pursuant to s. 429.65(9), F.S., which includes a functionally impaired person who is over the age of 60 who has physical and mental limitations that restricts the ability of that person to live independently and perform normal activities of daily living.
- "Physically disabled or handicapped person" pursuant to s. 760.22(7)(a), F.S., which includes a person that has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment.

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<sup>1</sup> chapter 89-372, L.O.F

<sup>2</sup> Section 419.001(1)(e), F.S., defines "sponsoring agency" as "an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home."

- Nondangerous “mentally ill person” pursuant to s. 394.455(18), Florida Statutes, which includes an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.
- “Child” who is found to be dependent by the court pursuant to ss. 39.01(14), and 984.03 F.S., and a “child” in need of services pursuant to ss. 984.03(9) and 985.03(8), F.S.

### **Effect of the CS**

The CS amends subsections (1) and (2) of s. 419.001, F.S., to define a “planned residential community” as a planned unit development having amenities that are designed to serve residents who have developmental disabilities and may consist of two or more community residential homes that are contiguous to one another.

The CS provides that homes that have six or fewer residents that would otherwise meet the definition of a community residential home that is within a planned residential community does not require local government approval regardless of their proximity to each other. This means that even if a home with 6 or fewer disabled residents locates within 1,000 feet of another home with 6 or fewer disabled residents or a community group home, it will not require additional local government approval.

These provisions will make it easier for homes with 6 or fewer disabled residents to locate within a planned unit development designed to serve residents who have developmental disabilities. This exemption makes it clear that these homes will not have to get local approval, but they will still have to provide notification to the local government.

The intent of the CS is to allow the planning and development of special needs communities in areas adjacent to residential areas. Proponents of the CS emphasize that this would not be an institutional setting, since other adults, including family members, friends, and other care-givers may also live in the community. Qualifying persons will still be eligible for Supported Living services, and proponents advocate that these “planned residential communities” would allow the service providers better access to their clients and save the state money by not requiring the providers to drive further distances to their clients.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 419.001 to create a definition for a “planned residential community” and exempts them from local approval regardless of its proximity to other similar homes or community residential homes.

**Section 2.** Provides an effective date of July 1, 2009

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### Comments by the Health Care Services Committee

#### Background

Historically, community housing options for persons with disabilities, frail elderly persons, dependent or delinquent children, and persons with mental illnesses have been limited. Although the transition from providing services in large institutions to community based programs began in the 1970s, the availability of safe, appropriate, and affordable housing in Florida has been an ongoing challenge. The "NIMBY" (Not In My Back Yard) syndrome is used to describe the opposition to siting affordable housing or housing for persons with disabilities or special needs in residential neighborhoods. This opposition began to be routinely challenged during the 1980s as policy and practice reform led to the development of more opportunities for persons with disabilities to live independently and participate fully in their communities.

#### Federal Law

The Federal Fair Housing Act of 1988 prohibits discrimination on the basis of a handicap in all types of housing transactions. The Act defines a "handicap" to mean those mental or physical impairments that substantially limit one or more major life activities. The term "mental or physical impairment" may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such impairment, or are regarded as having such impairment. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled under the Fair Housing Act, by virtue of that status.<sup>3</sup>

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<sup>3</sup> United States Department of Justice, [http://www.usdoj.gov/crt/housing/housing\\_coverage.htm](http://www.usdoj.gov/crt/housing/housing_coverage.htm) .

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of people with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA). In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective community-based services.<sup>4</sup> The Olmstead decision interpreted Title II of the ADA and its implementing regulation, requiring states to administer their services, programs, and activities "in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities." The ADA and the Olmstead decision apply to all qualified individuals with disabilities regardless of age.

## Florida Law

The Florida Fair Housing Act was enacted in 1983<sup>5</sup> and provided that it is the policy of this state to provide, within constitutional limitations, for fair housing throughout the state.<sup>6</sup> It also provides that, "It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available." The statute states further that "discrimination" is defined as to include a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.<sup>7</sup>

The Agency for Persons with Disabilities (APD or agency) is required to facilitate the placement of clients within smaller, less-restrictive residential settings.<sup>8</sup> Some have argued that personal outcomes for persons with developmental disabilities are highly correlated with the number of other individuals, possessing similar disabilities, with whom they live.<sup>9</sup> In addition, some have also noted a concern that congregating these individuals would create segregation similar to institutionalization.

The provision of Medicaid services to residents of certain types of residential settings is largely governed by the requirements of the Medicaid Developmental Disabilities Home and Community-Based Services (DD-HCBS) Waiver. According to Page 1-9 of the Medicaid DD-HCBS Waiver Coverage and Limitations Handbook:<sup>10</sup>

The purpose of the DD waiver is to promote, maintain and restore the health of eligible recipients with developmental disabilities; to minimize the effects of illness and disabilities through the provision of needed supports and services in order to delay or prevent institutionalization; and to foster the principles of self-determination as a foundation for services and supports. The intent of the waiver is to provide a viable choice of services that allow eligible recipients to live as independently as possible in their own home or in the community and to achieve productive lives as close to normal as possible as opposed to residing in an Intermediate Care Facility for the Developmentally Disabled (ICF/DD) or other institutional settings.

The agency is also required to establish, by administrative rule, distance requirements between APD-licensed homes.<sup>11</sup> The language, in rule 65G-2.015, F.A.C., prohibits the siting of contiguous APD-licensed homes.

## People First Language

The changes on **lines 41-49** of the bill appear to reflect the use of "people first language."

People first language is a semantic technique used when discussing individuals with disabilities. The technique is to use the term "person with a disability", putting the person first, rather than "disabled person", which puts the disability first. The rationale behind people-first language is that it recognizes

<sup>4</sup> See *Olmstead v. L.C.*, 527 U.S. 581 (1999).

<sup>5</sup> See Chapter 83-221, Laws of Florida.

<sup>6</sup> See s. 760.21, Florida Statutes.

<sup>7</sup> See s. 760.23(7) and (9), Florida Statutes.

<sup>8</sup> See s. 393.0651(5), Florida Statutes.

<sup>9</sup> Agency for Persons with Disabilities Bill Analysis, SB 1124.

<sup>10</sup> Developmental Disabilities Waiver Services Coverage and Limitations Handbook, available at

[https://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL\\_08\\_070701\\_Waiver\\_DevSev\\_ver1%2003%20\(2\).pdf](https://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_08_070701_Waiver_DevSev_ver1%2003%20(2).pdf).

<sup>11</sup> See s. 393.501(2), Florida Statutes.

that someone is a person first, and that the disability is a part, but not all of them. Thus, it asks for one to respect the disabled community as first and foremost a community of people. Since the late 1980s, people-first language has gained considerable acceptance with disabled people as well as professionals working with them or people otherwise interested in the topic. Adherence to the rules of people-first language has become a requirement in some academic journals. By extension, "people first" is a common part of the names of organizations representing people with disabilities in the United States and internationally.<sup>12</sup>

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On April 1, 2009, CS/HB 371 was amended in the Economic Development & Community Affairs Policy Committee upon adoption of two amendments. The analysis reflects the bill as amended. Specifically the amendments:

- Amendment 1 - clarifies that homes located within a planned residential community are not subject to the 1000 foot radius prohibition.
- Amendment 2 - Technical amendment changing wording in the definition of "Planned Residential Community"

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<sup>12</sup> Texas Council for Developmental Disabilities. Available at:  
<http://www.txddc.state.tx.us/resources/publications/pfanguage.asp>.